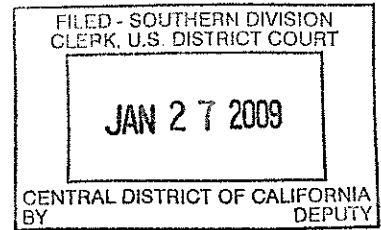


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6 Attorneys for Plaintiff

7 UNITED STATES DISTRICT COURT  
8 CENTRAL DISTRICT OF CALIFORNIA  
9 SOUTHERN DIVISION  
10

11 OAKLEY, INC., a Washington  
12 corporation,

13 Plaintiff,

14 vs.

15 DIGITALRISE, LLC, an Oregon  
16 Limited Liability Company  
17 Defendant

Case No.:  
**CV09-624 CAS (JWJx)**

COMPLAINT FOR PATENT  
INFRINGEMENT AND  
TRADEMARK INFRINGEMENT

DEMAND FOR JURY TRIAL

18  
19 Plaintiff, Oakley, Inc. (hereinafter referred to as "Oakley") complains of  
20 Defendant Digitalrise, LLC (hereinafter referred to as "Digitalrise") and alleges as  
21 follows:

22 **JURISDICTION AND VENUE**

23 1. Jurisdiction over this action is founded upon 28 U.S.C. §§ 1331 and  
24 1338. Venue is proper in this forum under 28 U.S.C. §§ 1391(a-d) and 28 U.S.C. §  
25 1400(b). The claim arose in this judicial district, and Defendant is doing business  
26 in this judicial district.

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**THE PARTIES**

2. Plaintiff Oakley, Inc. is a corporation organized and existing under the laws of the state of Washington having its principal place of business located at One Icon, Foothill Ranch, California 92610.

3. Oakley is informed and believes, and thereupon alleges, that Defendant Digitalrise, LLC is an Oregon limited liability company having its principal place of business at 818 SW 3<sup>rd</sup> Ave, Portland, Oregon, also doing business as chinagrabber.com, gadgetgreats.com, digitalrise.com, and doing business within this judicial district, marketing and offering to sell the accused products in this district, selling the accused products in this district, and otherwise putting the accused products in the stream of commerce knowing they will be sold in this district.

**FACTUAL BACKGROUND**

4. Oakley is a manufacturer and seller of high performance eyewear, electronic eyewear, and accessories.

5. In the past couple years, Oakley has expanded its reputation as an innovator in the eyewear industry by introducing a whole new category of products—wearable electronics. With the introduction of its first product in this category, the world was introduced to MP3 sunglasses, which allow the wearer to listen to their tunes from uploaded MP3 on their sunglasses, without the hindrance of wires. Oakley’s first offering, its “Thump” sunglass, was a huge success, praised by many commentators, and Oakley’s MP3 sunglasses have enjoyed enormous commercial success, which is likely to continue.

6. Oakley is the owner by assignment of U.S. Patent No. 6,966,647 B2 duly and lawfully issued on November 22, 2005, describing and claiming the invention of James H. Jannard and Jeffrey J. Julian entitled “TELECOMMUNICATIONS ENABLED EYEGLOSS” protecting Oakley’s

1 technology related to MP3 sunglasses. A true and correct copy of U.S. Patent No.  
2 6,966,647B2 is attached hereto as Exhibit 1 and incorporated herein by reference.

3 7. Oakley is the owner by assignment of U.S. Patent No. 7,219,994 duly  
4 and lawfully issued on May 22, 2007, describing and claiming the invention of  
5 James H. Jannard and Jeffrey J. Julian entitled "EYEGLASS WITH MP3  
6 PLAYER" protecting Oakley's technology related to MP3 sunglasses. A true and  
7 correct copy of U.S. Patent No. 7,219,994 is attached hereto as Exhibit 2 and  
8 incorporated herein by reference.

9 8. Oakley is the owner by assignment of U.S. Patent No. 7,216,973 duly  
10 and lawfully issued on May 15, 2007, describing and claiming the invention of  
11 James Jannard, Davin Saderholm, Carlos Reyes, Colin Baden, Samner Lane Bruns,  
12 Michael Webb and Eric Bernard Daniels entitled "EYEGLASS WITH MP3  
13 PLAYER" protecting Oakley's technology related to MP3 sunglasses. A true and  
14 correct copy of U.S. Patent No. 7,216,973 is attached hereto as Exhibit 3 and  
15 incorporated herein by reference.

16 9. Oakley is the owner by assignment of U.S. Patent No. D548,767 duly  
17 and lawfully issued on August 14, 2007, describing and claiming the invention of  
18 James Jannard, Hans Karsten Moritz, Colin Baden, and Jamin Jannard entitled  
19 "EYEGLASS AND EYEGLASS COMPONENTS" protecting Oakley's eyeglass  
20 design embodied in its "Thump 2" line of sunglasses. A true and correct copy of  
21 U.S. Patent No. D458,767 is attached hereto as Exhibit 4 and incorporated herein  
22 by reference.

23 10. Oakley is the owner by assignment of U.S. Patent No. D561,816 duly  
24 and lawfully issued on February 12, 2007, describing and claiming the invention of  
25 James Jannard, Hans Karsten Moritz, Colin Baden, and Jamin Jannard entitled  
26 "EYEGLASS COMPONENT" protecting Oakley's eyeglass design embodied in  
27 its "Thump 2" line of sunglasses. A true and correct copy of U.S. Patent No.  
28 D458,767 is attached hereto as Exhibit 5 and incorporated herein by reference.

1           11. Oakley is informed and believes, and thereupon alleges that the  
2 Defendant is selling sunglasses that copy U.S. Patent Nos. 6,996,647, 7,219,994,  
3 7,216,973, D548,767 and D561,816 of Oakley. Oakley alleges that Defendant's  
4 model entitled "Thump 2" embody the subject matter claimed in Oakley's U.S.  
5 Patent Nos. 6,996,647, 7,219,994, 7,216,973, D548,767 and D561,816, without  
6 any license thereunder and is thereby infringing said patent. Oakley is informed  
7 and believes and based thereon that Defendant sold the infringing Oakley  
8 sunglasses through its websites online and elsewhere.

9           12. Oakley is the owner by assignment of U.S. Patent No. D538,836 duly  
10 and lawfully issued on March 20, 2007, describing and claiming the invention of  
11 Hans Karsten Moritz, Colin Baden, Eric Daniels and An Tran entitled  
12 "EYEWEAR MODULE" protecting Oakley's design of an earpiece for eyeglasses  
13 embodied in its "Razrwire" line of sunglasses. A true and correct copy of U.S.  
14 Patent No. D538,836 is attached hereto as Exhibit 6 and incorporated herein by  
15 reference.

16           13. Oakley is the owner by assignment of U.S. Patent No. 7,004,582 duly  
17 and lawfully issued on February 28, 2006, describing and claiming the invention of  
18 James Jannard, Davin Saderholm, Carlos Reyes and Colin Baden entitled  
19 "ELECTRONICALLY ENABLED EYEWEAR" protecting Oakley's technology  
20 related to Bluetooth enabled sunglasses. A true and correct copy of U.S. Patent  
21 No. 7,004,582 is attached hereto as Exhibit 7 and incorporated herein by reference.

22           14. Oakley is the owner by assignment of U.S. Patent No. 7,213,917 duly  
23 and lawfully issued on May 8, 2007, describing and claiming the invention of  
24 James Jannard, Davin Saderholm, Carlos Reyes and Colin Baden entitled  
25 "ELECTRONICALLY ENABLED EYEWEAR" protecting Oakley's technology  
26 related to Bluetooth enabled sunglasses. A true and correct copy of U.S. Patent  
27 No. 7,213,917 is attached hereto as Exhibit 8 and incorporated herein by reference.  
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1           15. Oakley is the owner by assignment of U.S. Patent No. 7,150,526 duly  
2 and lawfully issued on December 19, 2006, describing and claiming the invention  
3 of James Jannard, Davin Saderholm, Carlos Reyes, Colin Baden, and Sumner  
4 Lane Bruns entitled "WIRELESS INTERACTIVE HEADSET" protecting  
5 Oakley's technology related to Bluetooth enabled sunglasses. A true and correct  
6 copy of U.S. Patent No. 7,150,526 is attached hereto as Exhibit 9 and incorporated  
7 herein by reference.

8           16. Oakley is informed and believes, and thereupon alleges that the  
9 Defendant is selling sunglasses that copy U.S. Patent Nos. D538,836, 7,004,582,  
10 7,213,917, and 7,150,526 of Oakley. Oakley alleges that Defendant's model  
11 entitled "Oakley Razrwire" embodies the subject matter claimed in Oakley's U.S.  
12 Patent No. D538,836, 7,004,582, 7,213,917, and 7,150,526, without any license  
13 thereunder and is thereby infringing said patent. Oakley is informed and believes  
14 and based thereon that Defendant sold the infringing Oakley sunglasses through its  
15 websites online and elsewhere.

16           17. Oakley is the owner by assignment of U.S. Patent No. 7,278,734 duly  
17 and lawfully issued on October 9, 2007, describing and claiming the invention of  
18 James Jannard, Carlos Reyes, Colin Baden, and Sumner Lane Bruns entitled  
19 "WIRELESS INTERACTIVE HEADSET" protecting Oakley's technology related  
20 to adjustable earpieces for eyewear, embodied in its "Thump 2" and "Razrwire"  
21 lines of sunglasses. A true and correct copy of U.S. Patent No. 7,278,734 is  
22 attached hereto as Exhibit 10 and incorporated herein by reference.

23           18. Oakley is informed and believes, and thereupon alleges that the  
24 Defendant is selling sunglasses that copy U.S. Patent No. 7,278,734 of Oakley.  
25 Oakley alleges that Defendant's models entitled "Thump 2" and "Oakley  
26 Razrwire" embody the subject matter claimed in Oakley's U.S. Patent No.  
27 7,278,734, without any license thereunder and is thereby infringing said patent.  
28

1 Oakley is informed and believes and based thereon that Defendant sold the  
2 infringing models through its websites online and elsewhere.

3 19. Oakley is the owner by assignment of U.S. Patent No. D514,613 duly  
4 and lawfully issued on February 7, 2006, describing and claiming the invention of  
5 James H. Jannard, Hans Karsten Moritz, and Lek Thixton entitled "EYEGLOSS  
6 AND EYEGLOSS COMPONENTS" protecting an eyeglass design embodied in its  
7 "Thump" lines of glasses. A true and correct copy of U.S. Patent No. D514,613 is  
8 attached hereto as Exhibit 11, and incorporated herein by reference.

9 20. Oakley is informed and believes, and thereupon alleges, that  
10 Defendant is or has manufactured, offered to sell, imported, and sold its  
11 Bluetooth/MP3 sunglass models in this judicial district. Oakley is informed and  
12 believes, and thereupon alleges, that Defendant is presently marketing and selling  
13 eyewear models, specifically including but not limited to Bluetooth/MP3 sunglass  
14 models, which Oakley alleges infringe its U.S. Patent No. D514,613 by copying  
15 the design and ornamentation of the design protected by this patent.

16 21. Oakley is the owner by assignment of U.S. Patent No. D523,461 duly  
17 and lawfully issued on June 20, 2006, describing and claiming the invention of  
18 James H. Jannard, Hans Karsten Moritz, and Lek Thixton entitled "EYEGLOSS  
19 COMPONENT" protecting an eyeglass design embodied in its "Thump" lines of  
20 glasses. A true and correct copy of U.S. Patent No. D523,461 is attached hereto as  
21 Exhibit 12, and incorporated herein by reference.

22 22. Oakley is informed and believes, and thereupon alleges, that  
23 Defendant is or has manufactured, offered to sell, imported, and sold its  
24 Bluetooth/MP3 sunglass models in this judicial district. Oakley is informed and  
25 believes, and thereupon alleges, that Defendant is presently marketing and selling  
26 eyewear models, specifically including but not limited to Bluetooth/MP3 sunglass  
27 models, which Oakley alleges infringe its U.S. Patent No. D523,461 by copying  
28 the design and ornamentation of the design protected by this patent.

1           23. Oakley is the owner by assignment of U.S. Patent No. 7,264,350 duly  
2 and lawfully issued on September 4, 2007, describing and claiming the invention  
3 of James Jannard, Davin Saderholm, Carlos Reyes, Colin Baden, Summer Lane  
4 Bruns, Michael Webb, and Eric Daniels entitled "MULTI-DIRECTIONAL  
5 ADJUSTMENT DEVICES FOR SPEAKER MOUNTS FOR EYEGGLASS WITH  
6 MP3 PLAYER" protecting claimed technology embodied in its "Thump" lines of  
7 glasses. A true and correct copy of U.S. Patent No. 7,264,350 is attached hereto as  
8 Exhibit 13, and incorporated herein by reference.

9           24. Oakley is informed and believes, and thereupon alleges, that  
10 Defendant is or has manufactured, offered to sell, imported, and sold its  
11 Bluetooth/MP3 sunglass models in this judicial district. Oakley is informed and  
12 believes, and thereupon alleges, that Defendant is presently marketing and selling  
13 eyewear models, specifically including but not limited to Bluetooth/MP3 sunglass  
14 models, which Oakley alleges infringe its U.S. Patent No. 7,264,350 by selling  
15 products that embody and infringe, without a license or authority from Oakley, one  
16 or more claims of the Patent.

17           25. Oakley is the owner of U.S. Trademark No. 1,521,599, duly registered  
18 on January 24, 1989, claiming the trademark "Oakley" for use on goods in Class 9.  
19 A true and correct copy of this trademark registration is attached hereto and  
20 incorporated by reference as Exhibit 14.

21           26. The trademark registration referred to above is in full force and effect.  
22 The trademark and the good will of business of Plaintiff Oakley in connection with  
23 which the trademark has been used have never been abandoned. Oakley continues  
24 to preserve and maintain its rights with respect to the trademark registration.

25           27. The trademark above is inherently distinctive in appearance and has  
26 become, through widespread public acceptance, a distinctive designation of the  
27 source of origin of goods offered by Oakley and has acquired secondary meaning  
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1 in the marketplace and constitutes an asset of incalculable value as a symbol of  
2 Oakley and its quality goods and good will.

3 28. Plaintiff is informed and believes and based thereon alleges that  
4 Defendant and its agents, employees, and servants have advertised and sold  
5 products bearing the trademark referred to above, which advertisements and  
6 products sold are confusing similar to that of Oakley's trademark, and are,  
7 therefore, an infringement of Oakley's above described trademark. Indeed, the  
8 packaging of Defendant's unauthorized copies of Oakley products is identical or  
9 very similar to genuine Oakley products.

10 29. Oakley is the owner of U.S. Trademark No. 1,984,501, duly registered  
11 on July 2, 1996, claiming the trademark ellipsoid "o" for use on goods in Class 9.  
12 A true and correct copy of this trademark registration is attached hereto and  
13 incorporated by reference as Exhibit 15.

14 30. The trademark registration referred to above is in full force and effect.  
15 The trademark and the good will of business of Plaintiff Oakley in connection with  
16 which the trademark has been used have never been abandoned. Oakley continues  
17 to preserve and maintain its rights with respect to the trademark registration.

18 31. The trademark above is inherently distinctive in appearance and has  
19 become, through widespread public acceptance, a distinctive designation of the  
20 source of origin of goods offered by Oakley and has acquired secondary meaning  
21 in the marketplace and constitutes an asset of incalculable value as a symbol of  
22 Oakley and its quality goods and good will.

23 32. Plaintiff is informed and believes and based thereon alleges that  
24 Defendant and its agents, employees, and servants have advertised and sold  
25 products bearing the trademark referred to above, which advertisements and  
26 products sold are confusing similar to that of Oakley's trademark, and are,  
27 therefore, an infringement of Oakley's above described trademark.

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1           33. Defendant received actual notice of Oakley's proprietary rights in its  
2 Patents-In-Suit by way of this lawsuit. Additionally, Oakley "Thump and "Thump  
3 2" sunglasses come in packaging that contains patent notification which constitutes  
4 constructive notice to the Defendant of Oakley's rights in U.S. Patent Nos.  
5 6,996,647, 7,219,994, 7,216,973, D548,767, D561,816, 7,278,734, D514,613,  
6 D523,461 and 7,264,350. Further, Oakley's "Razrwire" sunglasses come in  
7 packaging that contains patent notification which constitutes construction notice to  
8 the Defendant of Oakley's rights in U.S. Patent Nos. D538,836, 7,004,582,  
9 7,213,917, 7,150,526, and 7,278,734. Moreover, Defendant's use of Oakley's  
10 trademarks, "Oakley" and ellipsoid "O", in its advertising, on the product, and/or  
11 on packaging, shows actual notice of Oakley's proprietary rights. Defendant  
12 copied these same notices on its packaging, evidencing its awareness of Oakley's  
13 patent and trademark rights. Despite such notice, of Oakley's patent rights,  
14 Defendant has continued to sell its infringing models. On information and belief,  
15 Defendant's infringement was willful and wanton.

16           34. Oakley is informed and believes and thereupon alleges that the sale of  
17 Defendant's infringing sunglasses has resulted in lost sales, has reduced the  
18 business and profit of Oakley, and has greatly injured the goodwill and reputation  
19 associated with Oakley, all to Oakley's damage in an amount not yet fully  
20 determined.

21           35. Moreover, the Defendant wrongfully profited from Oakley's invention  
22 by selling sunglasses that infringed Oakley's U.S. Patent Nos. 6,996,647,  
23 7,219,994, 7,216,973, D548,767, D561,816, D538,836, 7,004,582, 7,213,917,  
24 7,150,526, 7,278,734, D514,613, D523,461 and 7,264,350. The exact amount of  
25 profits realized by Defendant as a result of its infringing activities are presently  
26 unknown to Oakley, as are the exact amount of damages suffered by Oakley as a  
27 result of said activities. These profits and damages cannot be accurately  
28 ascertained without an accounting.

**FIRST CLAIM FOR RELIEF**

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36. The allegations of paragraph 1 through 35 are repled and realleged as though fully set forth herein.

37. This is a claim for patent infringement and arises under 35 U.S.C. §§ 271 and 281.

38. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1338.

39. Oakley is the owner of U.S. Patent No. 6,966,647 which protects, Oakley's technology related to MP3 sunglasses, as set forth above. By statute, the patent is presumed to be valid and enforceable under 35 U.S.C. § 282.

40. Defendant Digitalrise, through its agents, suppliers, employees and servants, manufactured, imported, offered for sale and sold sunglasses which fall within the scope and claims contained in U.S. Patent No. 6,966,647, without any rights or license under that patent.

41. Oakley is informed and believes and thereupon alleges that Defendant Digitalrise willfully infringed upon Oakley's exclusive rights under the patent, with full notice and knowledge thereof. Oakley understands that Defendant is presently selling such infringing sunglasses, failed to cease the sale thereof, and will likely continue to do so unless restrained therefrom by this court, all to the great loss and injury of Oakley.

42. Oakley is informed and believes and thereupon alleges that Defendant Digitalrise has derived, received, and will continue to derive and receive from these acts of infringement, gains, profits and advantages in an amount not presently known to Oakley. By reason of these acts of infringement, Oakley has been and will continue to be greatly damaged.

1           43. Defendant Digitalrise will continue to infringe U.S. Patent No.  
2 6,966,647 to the great and irreparable injury of Oakley, for which Oakley has no  
3 adequate remedy at law unless said Defendant is enjoined by this court.

4                           **SECOND CLAIM FOR RELIEF**

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6           44. The allegations of paragraph 1 through 35 are repled and realleged as  
7 though fully set forth herein.

8           45. This is a claim for patent infringement and arises under 35 U.S.C. §§  
9 271 and 281.

10           46. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1338.

11           47. Oakley is the owner of U.S. Patent No. 7,219,994 which protects  
12 Oakley's technology related to MP3 sunglasses, as set forth above. By statute, the  
13 patent is presumed to be valid and enforceable under 35 U.S.C. § 282.

14           48. Defendant Digitalrise, through its agents, suppliers, employees and  
15 servants, manufactured, imported, offered for sale and sold sunglasses which fall  
16 within the scope and claims contained in U.S. Patent No. 7,219,994, without any  
17 rights or license under that patent.

18           49. Oakley is informed and believes and thereupon alleges that Defendant  
19 Digitalrise willfully infringed upon Oakley's exclusive rights under the patent, with  
20 full notice and knowledge thereof. Oakley understands that Defendant is presently  
21 selling such infringing sunglasses, failed to cease the sale thereof, and will likely  
22 continue to do so unless restrained therefrom by this court, all to the great loss and  
23 injury of Oakley.

24           50. Oakley is informed and believes and thereupon alleges that Defendant  
25 Digitalrise has derived, received, and will continue to derive and receive from  
26 these acts of infringement, gains, profits and advantages in an amount not presently  
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1 known to Oakley. By reason of these acts of infringement, Oakley has been and  
2 will continue to be greatly damaged.

3 51. Defendant Digitalrise will continue to infringe U.S. Patent No.  
4 7,219,994 to the great and irreparable injury of Oakley, for which Oakley has no  
5 adequate remedy at law unless said Defendant is enjoined by this court.

6 **THIRD CLAIM FOR RELIEF**

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8 52. The allegations of paragraph 1 through 35 are repled and realleged as  
9 though fully set forth herein.

10 53. This is a claim for patent infringement and arises under 35 U.S.C. §§  
11 271 and 281.

12 54. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1338.

13 55. Oakley is the owner of U.S. Patent No. 7,216,973 which protects,  
14 Oakley's MP3 sunglasses, as set forth above. By statute, the patent is presumed to  
15 be valid and enforceable under 35 U.S.C. § 282.

16 56. Defendant Digitalrise, through its agents, suppliers, employees and  
17 servants, manufactured, imported, offered for sale and sold sunglasses which fall  
18 within the scope and claims contained in U.S. Patent No. 7,216,973, without any  
19 rights or license under that patent.

20  
21 57. Oakley is informed and believes and thereupon alleges that Defendant  
22 Digitalrise willfully infringed upon Oakley's exclusive rights under the patent, with  
23 full notice and knowledge thereof. Oakley understands that Defendant is presently  
24 selling such infringing sunglasses, failed to cease the sale thereof, and will likely  
25 continue to do so unless restrained therefrom by this court, all to the great loss and  
26 injury of Oakley.

27 58. Oakley is informed and believes and thereupon alleges that Defendant  
28 Digitalrise has derived, received, and will continue to derive and receive from

1 these acts of infringement, gains, profits and advantages in an amount not presently  
2 known to Oakley. By reason of these acts of infringement, Oakley has been and  
3 will continue to be greatly damaged.

4 59. Defendant Digitalrise will continue to infringe U.S. Patent No.  
5 7,216,973 to the great and irreparable injury of Oakley, for which Oakley has no  
6 adequate remedy at law unless said Defendant is enjoined by this court.

7 **FOURTH CLAIM FOR RELIEF**

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9 60. The allegations of paragraph 1 through 35 are repled and realleged as  
10 though fully set forth herein.

11 61. This is a claim for patent infringement and arises under 35 U.S.C. §§  
12 271 and 281.

13 62. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1338.

14 63. Oakley is the owner of U.S. Patent No. D548,767 which protects,  
15 among others, products embodying Oakley's MP3 sunglass invention embodied in  
16 its "Thump 2" line of sunglasses, as set forth above. By statute, the patent is  
17 presumed to be valid and enforceable under 35 U.S.C. § 282.

18 64. Defendant Digitalrise, through its agents, suppliers, employees and  
19 servants, manufactured, imported, offered for sale and sold sunglasses which fall  
20 within the scope and claims contained in U.S. Patent No. D548,767, without any  
21 rights or license under that patent.

22 65. Oakley is informed and believes and thereupon alleges that Defendant  
23 Digitalrise willfully infringed upon Oakley's exclusive rights under the patent, with  
24 full notice and knowledge thereof. Oakley understands that Defendant is presently  
25 selling such infringing sunglasses, failed to cease the sale thereof, and will likely  
26 continue to do so unless restrained therefrom by this court, all to the great loss and  
27 injury of Oakley.  
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1           66. Oakley is informed and believes and thereupon alleges that Defendant  
2 Digitalrise has derived, received, and will continue to derive and receive from  
3 these acts of infringement, gains, profits and advantages in an amount not presently  
4 known to Oakley. By reason of these acts of infringement, Oakley has been and  
5 will continue to be greatly damaged.

6           67. Defendant Digitalrise will continue to infringe U.S. Patent No.  
7 D548,767 to the great and irreparable injury of Oakley, for which Oakley has no  
8 adequate remedy at law unless said Defendant is enjoined by this court.

9  
10   **FIFTH CLAIM FOR RELIEF**

11           68. The allegations of paragraph 1 through 35 are repled and realleged as  
12 though fully set forth herein.

13           69. This is a claim for patent infringement and arises under 35 U.S.C. §§  
14 271 and 281.

15           70. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1338.

16           71. Oakley is the owner of U.S. Patent No. D561,816 which protects,  
17 among others, products embodying Oakley's MP3 sunglass invention embodied in  
18 its "Thump 2" line of sunglasses, as set forth above. By statute, the patent is  
19 presumed to be valid and enforceable under 35 U.S.C. § 282.

20           72. Defendant Digitalrise, through its agents, suppliers, employees and  
21 servants, manufactured, imported, offered for sale and sold sunglasses which fall  
22 within the scope and claims contained in U.S. Patent No. D561,816, without any  
23 rights or license under that patent.

24           73. Oakley is informed and believes and thereupon alleges that Defendant  
25 Digitalrise willfully infringed upon Oakley's exclusive rights under the patent, with  
26 full notice and knowledge thereof. Oakley understands that Defendant is presently  
27 selling such infringing sunglasses, failed to cease the sale thereof, and will likely  
28

1 continue to do so unless restrained therefrom by this court, all to the great loss and  
2 injury of Oakley.

3 74. Oakley is informed and believes and thereupon alleges that Defendant  
4 Digitalrise has derived, received, and will continue to derive and receive from  
5 these acts of infringement, gains, profits and advantages in an amount not presently  
6 known to Oakley. By reason of these acts of infringement, Oakley has been and  
7 will continue to be greatly damaged.

8 75. Defendant Digitalrise will continue to infringe U.S. Patent No.  
9 D561,816 to the great and irreparable injury of Oakley, for which Oakley has no  
10 adequate remedy at law unless said Defendant is enjoined by this court.  
11

#### 12 **SIXTH CLAIM FOR RELIEF**

13 76. The allegations of paragraph 1 through 35 are repled and realleged as  
14 though fully set forth herein.

15 77. This is a claim for patent infringement and arises under 35 U.S.C. §§  
16 271 and 281.

17 78. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1338.

18 79. Oakley is the owner of U.S. Patent No. D538,836 which protects,  
19 Oakley's design of an earpiece for eyeglasses embodied in its "Razrwire" line of  
20 sunglasses, as set forth above. By statute, the patent is presumed to be valid and  
21 enforceable under 35 U.S.C. § 282.  
22

23 80. Defendant Digitalrise, through its agents, suppliers, employees and  
24 servants, manufactured, imported, offered for sale and sold sunglasses which fall  
25 within the scope and claims contained in U.S. Patent No. D538,836, without any  
26 rights or license under that patent.

27 81. Oakley is informed and believes and thereupon alleges that Defendant  
28 Digitalrise willfully infringed upon Oakley's exclusive rights under the patent, with



1 full notice and knowledge thereof. Oakley understands that Defendant is presently  
2 selling such infringing sunglasses, failed to cease the sale thereof, and will likely  
3 continue to do so unless restrained therefrom by this court, all to the great loss and  
4 injury of Oakley.

5 82. Oakley is informed and believes and thereupon alleges that Defendant  
6 Digitalrise has derived, received, and will continue to derive and receive from  
7 these acts of infringement, gains, profits and advantages in an amount not presently  
8 known to Oakley. By reason of these acts of infringement, Oakley has been and  
9 will continue to be greatly damaged.

10 83. Defendant Digitalrise will continue to infringe U.S. Patent No.  
11 D538,836 to the great and irreparable injury of Oakley, for which Oakley has no  
12 adequate remedy at law unless said Defendant is enjoined by this court.

13  
14 **SEVENTH CLAIM FOR RELIEF**

15 84. The allegations of paragraph 1 through 35 are repled and realleged as  
16 though fully set forth herein.

17 85. This is a claim for patent infringement and arises under 35 U.S.C. §§  
18 271 and 281.

19 86. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1338.

20 87. Oakley is the owner of U.S. Patent No. 7,004,582 which protects  
21 Oakley's technology related to Bluetooth enabled sunglasses, as set forth above.  
22 By statute, the patent is presumed to be valid and enforceable under 35 U.S.C. §  
23 282.

24 88. Defendant Digitalrise, through its agents, suppliers, employees and  
25 servants, manufactured, imported, offered for sale and sold sunglasses which fall  
26 within the scope and claims contained in U.S. Patent No. 7,004,582, without any  
27 rights or license under that patent.  
28



1 within the scope and claims contained in U.S. Patent No. 7,213,917, without any  
2 rights or license under that patent.

3 97. Oakley is informed and believes and thereupon alleges that Defendant  
4 Digitalrise willfully infringed upon Oakley's exclusive rights under the patent, with  
5 full notice and knowledge thereof. Oakley understands that Defendant is presently  
6 selling such infringing sunglasses, failed to cease the sale thereof, and will likely  
7 continue to do so unless restrained therefrom by this court, all to the great loss and  
8 injury of Oakley.

9  
10 98. Oakley is informed and believes and thereupon alleges that Defendant  
11 Digitalrise has derived, received, and will continue to derive and receive from  
12 these acts of infringement, gains, profits and advantages in an amount not presently  
13 known to Oakley. By reason of these acts of infringement, Oakley has been and  
14 will continue to be greatly damaged.

15 99. Defendant Digitalrise will continue to infringe U.S. Patent No.  
16 7,213,917 to the great and irreparable injury of Oakley, for which Oakley has no  
17 adequate remedy at law unless said Defendant is enjoined by this court.

18 **NINTH CLAIM FOR RELIEF**

19  
20 100. The allegations of paragraph 1 through 35 are repeld and realleged as  
21 though fully set forth herein.

22 101. This is a claim for patent infringement and arises under 35 U.S.C. §§  
23 271 and 281.

24 102. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1338.

25 103. Oakley is the owner of U.S. Patent No. 7,150,526 which protects  
26 Oakley's technology related to Bluetooth enabled sunglasses, as set forth above.  
27 By statute, the patent is presumed to be valid and enforceable under 35 U.S.C. §  
28 282.



1 “Razrwire” and “Thump 2” lines of sunglasses, as set forth above. By statute, the  
2 patent is presumed to be valid and enforceable under 35 U.S.C. § 282.

3 112. Defendant Digitalrise, through its agents, suppliers, employees and  
4 servants, manufactured, imported, offered for sale and sold sunglasses which fall  
5 within the scope and claims contained in U.S. Patent No. 7,278,734, without any  
6 rights or license under that patent.

7 113. Oakley is informed and believes and thereupon alleges that Defendant  
8 Digitalrise willfully infringed upon Oakley's exclusive rights under the patent, with  
9 full notice and knowledge thereof. Oakley understands that Defendant is presently  
10 selling such infringing sunglasses, failed to cease the sale thereof, and will likely  
11 continue to do so unless restrained therefrom by this court, all to the great loss and  
12 injury of Oakley.

13 114. Oakley is informed and believes and thereupon alleges that Defendant  
14 Digitalrise has derived, received, and will continue to derive and receive from  
15 these acts of infringement, gains, profits and advantages in an amount not presently  
16 known to Oakley. By reason of these acts of infringement, Oakley has been and  
17 will continue to be greatly damaged.

18 115. Defendant Digitalrise will continue to infringe U.S. Patent No.  
19 7,278,734 to the great and irreparable injury of Oakley, for which Oakley has no  
20 adequate remedy at law unless said Defendant is enjoined by this court.

21  
22 **ELEVENTH CLAIM FOR RELIEF**

23  
24 116. The allegations of paragraph 1 through 35 are repled and realleged as  
25 though fully set forth herein.

26 117. This is a claim for patent infringement and arises under 35 U.S.C. §§  
27 271 and 281.

28 118. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1338.



1           125. This is a claim for patent infringement and arises under 35 U.S.C. §§  
2 271 and 281.

3           126. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1338.

4           127. Oakley is the owner of U.S. Patent No. D523,461 which protects  
5 Oakley's eyeglass design embodied in its "Thump" line of sunglasses, as set forth  
6 above. By statute, the patent is presumed to be valid and enforceable under 35  
7 U.S.C. § 282.

8           128. Defendant Digitalrise, through its agents, suppliers, employees and  
9 servants, manufactured, imported, offered for sale and sold sunglasses which fall  
10 within the scope and claims contained in U.S. Patent No. D523,461, without any  
11 rights or license under that patent.

12           129. Oakley is informed and believes and thereupon alleges that Defendant  
13 Digitalrise willfully infringed upon Oakley's exclusive rights under the patent, with  
14 full notice and knowledge thereof. Oakley understands that Defendant is presently  
15 selling such infringing sunglasses, failed to cease the sale thereof, and will likely  
16 continue to do so unless restrained therefrom by this court, all to the great loss and  
17 injury of Oakley.

18           130. Oakley is informed and believes and thereupon alleges that Defendant  
19 Digitalrise has derived, received, and will continue to derive and receive from  
20 these acts of infringement, gains, profits and advantages in an amount not presently  
21 known to Oakley. By reason of these acts of infringement, Oakley has been and  
22 will continue to be greatly damaged.

23           131. Defendant Digitalrise will continue to infringe U.S. Patent No.  
24 D523,461 to the great and irreparable injury of Oakley, for which Oakley has no  
25 adequate remedy at law unless said Defendant is enjoined by this court.  
26

27 .....  
28



**THIRTEENTH CLAIM FOR RELIEF**

1  
2 132. The allegations of paragraph 1 through 35 are repled and realleged as  
3 though fully set forth herein.  
4

5 133. This is a claim for patent infringement and arises under 35 U.S.C. §§  
6 271 and 281.

7 134. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1338.

8 135. Oakley is the owner of U.S. Patent No. 7,264,350 which protects,  
9 among others, products embodying adjustable eyeglass speakers embodied in its  
10 lines of sunglasses, as set forth above. By statute, the patent is presumed to be  
11 valid and enforceable under 35 U.S.C. § 282.

12 136. Defendant Digitalrise, through its agents, suppliers, employees and  
13 servants, manufactured, imported, offered for sale and sold sunglasses which fall  
14 within the scope and claims contained in U.S. Patent No. 7,264,350, without any  
15 rights or license under that patent.

16 137. Oakley is informed and believes and thereupon alleges that Defendant  
17 Digitalrise willfully infringed upon Oakley's exclusive rights under the patent, with  
18 full notice and knowledge thereof. Oakley understands that Defendant is presently  
19 selling such infringing sunglasses, failed to cease the sale thereof, and will likely  
20 continue to do so unless restrained therefrom by this court, all to the great loss and  
21 injury of Oakley.  
22

23 138. Oakley is informed and believes and thereupon alleges that Defendant  
24 Digitalrise has derived, received, and will continue to derive and receive from  
25 these acts of infringement, gains, profits and advantages in an amount not presently  
26 known to Oakley. By reason of these acts of infringement, Oakley has been and  
27 will continue to be greatly damaged.  
28

1           139. Defendant Digitalrise will continue to infringe U.S. Patent No.  
2 7,264,350 to the great and irreparable injury of Oakley, for which Oakley has no  
3 adequate remedy at law unless said Defendant is enjoined by this court.

4   **FOURTEENTH CLAIM FOR RELIEF**

5           140. The allegations of paragraphs 1 through 35 are repled and realleged as  
6 though fully set forth herein.

7           141. This is a claim for trademark infringement, and arises under 15 U.S.C.  
8 § 1114(a).

9           142. Jurisdiction is founded upon 15 U.S.C. § 1121.

10           143. Oakley is the owner of U.S. Registered Trademark Nos. 1,521,599,  
11 and 1,984,501 which confer on Oakley the exclusive right to use these trademarks  
12 in commerce. True and correct copies of U.S. registered Trademark Nos.  
13 1,521,599, and 1,984,501 are attached hereto as Exhibits 14-15, respectively.

14           144. The marks have been in use in commerce in connection with the sale  
15 of Oakley products continuously since at least as early as their respective dates of  
16 issue. The marks appear clearly on packaging, advertisements, product brochures,  
17 and on Oakley products.

18           145. Oakley is informed and believes, and thereupon alleges, that  
19 Defendant, through its agents, employees and servants, have advertised and sold  
20 products using the Oakley's registered marks without authority from Oakley for  
21 doing so.

22           146. Oakley is informed and believes, and thereupon alleges, that  
23 Defendant placed Oakley trademarks into the metatags of the Defendant's website  
24 to lure customers seeking Oakley product to their website to sell sunglasses that  
25 look similar to Oakley's "Thump 2" and "Razrwire" style of sunglasses.  
26  
27  
28

1 147. Oakley is informed and believes, and thereupon alleges, that  
2 Defendant's use of Oakley's registered trademarks in commerce constitutes  
3 trademark infringement, including but not limited to initial interest confusion.

4 148. Oakley is informed and believes, and thereupon alleges, that  
5 Defendant's unauthorized use of Oakley's registered trademarks has caused  
6 confusion in the marketplace as to the source of origin of Defendant's products and  
7 has caused damage to Oakley within this jurisdictional district.

8 149. Oakley is informed and believes, and thereupon alleges, that  
9 Defendant willfully infringed upon Oakley's exclusive rights under its trademarks  
10 with the intent to trade upon the good will of Oakley and to injure Oakley.

11 150. Oakley is informed and believes, and thereupon alleges, that  
12 Defendant has derived, received, and will continue to derive and receive from the  
13 aforesaid acts of infringement, gains, profits, and advantages in an amount not yet  
14 ascertainable, but will be determined at the time of trial.

15 151. Oakley is informed and believes, and thereupon alleges, that  
16 Defendant will continue to infringe Oakley's registered trademarks to the great and  
17 irreparable injury of Oakley, for which Oakley has no adequate remedy at law  
18 unless Defendant is enjoined by this court.

19 152. Oakley has been damaged in this judicial district as a result of the  
20 Defendant's infringement of its trademarks.

21 WHEREFORE, Plaintiff Oakley, Inc. prays as follows:

22 1. That Defendant Digitalrise be adjudicated to have infringed U.S.  
23 Patent No. 6,966,647 and that said patent is valid, enforceable and is owned by  
24 Oakley;

25 2. That Defendant Digitalrise be adjudicated to have infringed U.S.  
26 Patent No. 7,219,994 and that said patent is valid, enforceable and is owned by  
27 Oakley;  
28

1           3.       That Defendant Digitalrise be adjudicated to have infringed U.S.  
2 Patent No. 7,216,973 and that said patent is valid, enforceable and is owned by  
3 Oakley;

4           4.       That Defendant Digitalrise be adjudicated to have infringed U.S.  
5 Patent No. D548,767 and that said patent is valid, enforceable and is owned by  
6 Oakley;

7           5.       That Defendant Digitalrise be adjudicated to have infringed U.S.  
8 Patent No. D561,816 and that said patent is valid, enforceable and is owned by  
9 Oakley;

10          6.       That Defendant Digitalrise be adjudicated to have infringed U.S.  
11 Patent No. D538,836 and that said patent is valid, enforceable and is owned by  
12 Oakley;

13          7.       That Defendant Digitalrise be adjudicated to have infringed U.S.  
14 Patent No. 7,004,582 and that said patent is valid, enforceable and is owned by  
15 Oakley;

16          8.       That Defendant Digitalrise be adjudicated to have infringed U.S.  
17 Patent No. 7,213,917 and that said patent is valid, enforceable and is owned by  
18 Oakley;

19          9.       That Defendant Digitalrise be adjudicated to have infringed U.S.  
20 Patent No. 7,150,526 and that said patent is valid, enforceable and is owned by  
21 Oakley;

22          10.       That Defendant Digitalrise be adjudicated to have infringed U.S.  
23 Patent No. 7,278,734 and that said patent is valid, enforceable and is owned by  
24 Oakley;

25          11.       That Defendant Digitalrise be adjudicated to have infringed U.S.  
26 Patent No. D514,613 and that said patent is valid, enforceable and is owned by  
27 Oakley;

28

1           12. That Defendant Digitalrise be adjudicated to have infringed U.S.  
2 Patent No. D523,461 and that said patent is valid, enforceable and is owned by  
3 Oakley;

4           13. That Defendant Digitalrise be adjudicated to have infringed U.S.  
5 Patent No. 7,264,350 and that said patent is valid, enforceable and is owned by  
6 Oakley;

7           14. That Defendant Digitalrise, its agents, suppliers, servants, employees,  
8 managers, and officers, and all those persons in active concert or participation with  
9 them, be forthwith preliminarily and thereafter permanently enjoined from making,  
10 using, offering for sale or selling any sunglass which infringes U.S. Patent Nos.  
11 6,996,647, 7,219,994, 7,216,973, D548,767, D561,816, D538,836, 7,004,582,  
12 7,213,917, 7,150,526, 7,278,734, D514,613, D523,461, and 7,264,350;

13           15. That Defendant be adjudicated to have infringed Oakley's Registered  
14 Trademark No. 1,521,599, and that said trademark is valid and enforceable and is  
15 owned by Oakley;

16           16. That Defendant be adjudicated to have infringed Oakley's Registered  
17 Trademark No. 1,984,501, and that said trademark is valid and enforceable and is  
18 owned by Oakley;

19           17. That Defendant, and its agents, servants, employees, and attorneys  
20 and all persons in active concert and participation with them, be enjoined and  
21 restrained, during the pendency of this action and permanently thereafter from:  
22

23                   a. Using the Oakley's Registered Trademark Nos.  
24                   1,521,599, and 1,984,501 or any mark similar thereto in  
25                   connection with the sale of any goods;

26                   b. Using the above Oakley trademarks within the metatags or  
27                   websites of the Defendants;  
28

1 c. Committing any acts which may cause purchasers to believe  
2 that the Defendants or the products Defendants are selling are  
3 sponsored or authorized by, or are in any way associated with  
4 Plaintiff; and

5 d. Infringing Plaintiff's trademark rights;

6 18. That Defendant Digitalrise be directed to file with this court and serve  
7 upon Oakley within 30 days after the service of the injunction, a report in writing  
8 under oath, setting forth in detail the manner and form in which Defendant has  
9 compiled with the injunction;

10 19. That Defendant Digitalrise be required to account to Oakley for any  
11 and all lost profits suffered by Oakley or the Defendant's profits, and in no event  
12 less than a reasonable royalty by reason of Defendant's infringement of U.S. Patent  
13 Nos. 6,996,647, 7,219,994, 7,216,973, D548,767, D561,816, D538,836, 7,004,582,  
14 7,213,917, 7,150,526, 7,278,734, D514,613, D523,461 and 7,264,350 pursuant to  
15 35 U.S.C. § § 284 and 289;

16 20. That Defendant Digitalrise be required to account to Oakley for any  
17 and all lost profits suffered by Oakley, a reasonable royalty to Oakley, or the  
18 Defendant's profits associated with its unauthorized use of Oakley's trademarks  
19 under 15 U.S.C. § 1117 et seq.;

20 21. For statutory damages for counterfeit sales under 15 U.S.C. § 1117;

21 22. That treble damages be awarded in an amount up to three times the  
22 amount of damages found or assessed to compensate Oakley for the willful,  
23 deliberate and intentional acts of infringement by Defendant, pursuant to 35 U.S.C.  
24 § 284 and 15 U.S.C. § 1117;

25 23. For an aware of such damages and treble damages as plead above;


26 24. For an order requiring Defendant to deliver up and destroy all  
27 infringing sunglasses;

28

1           25.    That an award of reasonable costs, expenses and attorneys' fees be  
2 awarded against Defendants pursuant to 35 U.S.C. § 285 and 15 U.S.C. § 1117;  
3 and

4           26.    That Oakley have such other and further relief as circumstances of  
5 this case may require and that this court may deem just and proper.


6 DATED:    1/26/09                               WEEKS, KAUFMAN, NELSON & JOHNSON

7  
8   
9 \_\_\_\_\_  
10 GREGORY K. NELSON  
11 Attorney for Plaintiff, Oakley, Inc.

**JURY DEMAND**

12           Plaintiff Oakley, Inc. hereby requests a trial by jury in this matter.

13  
14 DATED:    1/26/09                               WEEKS, KAUFMAN, NELSON & JOHNSON

15  
16   
17 \_\_\_\_\_  
18 GREGORY K. NELSON  
19 Attorney for Plaintiff, Oakley, Inc.  
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28



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

OAKLEY, INC., a Washington corporation

PLAINTIFF(S)

v.

DIGITALRISE, LLC, an Oregon Limited Liability  
Company

DEFENDANT(S).

CASE NUMBER

CV09-624 CAS (JWJx)

SUMMONS

TO: DEFENDANT(S): DIGITALRISE, LLC

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached  complaint  \_\_\_\_\_ amended complaint  counterclaim  cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Gregory K. Nelson, whose address is 462 Stevens Avenue, Suite 310, Solana Beach, CA 92075. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court



JAN 27 2009

Dated: \_\_\_\_\_

By: DODJIE GARGANTOS  
Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge Christina A. Snyder and the assigned discovery Magistrate Judge is Jeffrey W. Johnson.

The case number on all documents filed with the Court should read as follows:

**CV09 - 624 CAS (JWJx)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====:

**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

**Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

**Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

**Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.